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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212477
Party	Defendant GFA Brands, Inc.
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Date	10/10/2013
Attachments	Answer in EARTH BALANCE opposition.pdf(36091 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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In the Matter of Application Serial No. 85/751,520: EARTH BALANCE  
Published for Opposition March 19, 2013

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BALANCE BAR COMPANY

Opposer

v.

Opposition No. 91212477

GFA BRANDS, INC.

Applicant.

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**ANSWER OF GFA BRANDS, INC.**

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GFA Brands, Inc. (“GFA” or “Applicant”) answers the Notice of Opposition as follows:

**PREAMBLE**

Applicant objects to any factual allegations contained in the preamble of the Notice of Opposition on the grounds that Balance Bar Company (“Balance Bar” or “Opposer”) has not set forth the allegations contained therein in numbered paragraphs as required by the Federal Rules of Civil Procedure. Without waiving this objection, Applicant admits that it applied to register EARTH BALANCE in connection with “nut and seed-based snack bars” and that the registration application was assigned serial no. 85/751,520. Applicant denies the remaining allegations in the preamble.

1. Opposer is a Delaware corporation, with a place of business at 115 E. Stevens Avenue, Suite 202, Valhalla, New York 10595.

**ANSWER:** GFA lacks sufficient information or knowledge to either admit or deny the allegations of paragraph 1, and therefore on that basis denies the same.

2. Opposer sells, and has sold, snack bars; protein-based, nutrient-dense snack bars; grain-based food bars also containing fruits and nuts; and cereal-based, rice-based, or granola-based snack bars and snack foods.

**ANSWER:** GFA lacks sufficient information or knowledge to either admit or deny the allegations of paragraph 2, and therefore on that basis denies the same.

3. Opposer utilizes the marks BALANCE; BALANCE BAR; BALANCE GOLD; BALANCE BAR GOLD; BALANCE BARE; and BALANCE PURE (hereinafter the “Trademarks”), as trademarks indicating the source of origin for its products.

**ANSWER:** GFA lacks sufficient information or knowledge to either admit or deny the allegations of paragraph 3, and therefore on that basis denies the same.

4. Since prior to the filing date of the above-identified application, Opposer has been using the Trademarks in interstate commerce in connection with the goods described in Paragraph 2.

**ANSWER:** GFA lacks sufficient information or knowledge to either admit or deny the allegations of paragraph 4, and therefore on that basis denies the same.

5. Opposer is the owner of United States Registration No. 2,636,101 for the mark BALANCE GOLD as used in connection with snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 2,636,101 for the mark BALANCE GOLD. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 5, and therefore on that basis denies the same.

6. Opposer is the owner of United States Registration No. 2,745,850 for the mark BALANCE as used in connection with protein based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 2,745,850 for the mark BALANCE. GFA lacks

sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 6, and therefore on that basis denies the same.

7. Opposer is the owner of the United States Registration No. 2,999,244 for the mark BALANCE BAR GOLD as used in connection with protein-based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 2,999,244 for the mark BALANCE BAR GOLD. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 7, and therefore on that basis denies the same.

8. Opposer is the owner of United States Registration No. 3,036,771 for the mark BALANCE BAR as used in connection with protein-based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 3,036,771 for the mark BALANCE BAR. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 8, and therefore on that basis denies the same.

9. Opposer is the owner of United States Registration No. 3,436,917 for the mark BALANCE BARE as used in connection with protein-based, nutrient-dense snack bars in International Class 29; and grain-based food bars also containing fruits and nuts, in International Class 30. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 3,436,917 for the mark BALANCE BARE. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 9, and therefore on that basis denies the same.

10. Opposer is the owner of United States Registration No. 3,760,265 for the mark BALANCE PURE as used in connection with protein-based nutrient dense snack bars in International Class 29; and cereal based snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 3,760,265 for the mark BALANCE PURE. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 10, and therefore on that basis denies the same.

11. Opposer is the owner of United States Registration No. 3,937,988 for the mark BALANCE as used in connection with cereal-based, rice-based, or granola-based snack bars and snack foods, in International Class 30. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 3,937,988 for the mark BALANCE. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 11, and therefore on that basis denies the same.

12. Opposer is the owner of United States Registration No. 4,062,171 for the mark BALANCE BAR as used in connection with cereal derived, rice-based and granola-based snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

**ANSWER:** GFA admits that the records of the U.S. Patent and Trademark Office indicate that Opposer owns Registration No. 4,062,171 for the mark BALANCE BAR. GFA lacks sufficient information or knowledge to either admit or deny the remaining allegations of paragraph 12, and therefore on that basis denies the same.

13. Opposer has expended substantial amounts of money, time and effort in advertising and promoting its Trademarks throughout the United States so that the public has come to associate and attribute usage of the Trademarks with Opposer. Moreover, as a result of these efforts, Opposer has developed a family of BALANCE marks having substantial goodwill and recognition in the marketplace.

**ANSWER:** GFA lacks sufficient information or knowledge to either admit or deny the allegations of paragraph 13, and therefore on that basis denies the same.

14. Applicant's mark is confusingly similar to Opposer's Trademarks whereby use of Applicant's mark on "nut and seed-based snack bars", as recited in Applicant's application, will create a likelihood of confusion, mistake or deception among the purchasing public.

**ANSWER:** Denies.

15. The “nut and seed-based snack bars” recited in Applicant’s application are substantially similar, if not identical, to the goods offered by Opposer (mentioned hereinabove in Paragraph 2) under the Trademarks, and to the goods listed in Opposer’s registrations identified hereinabove in Paragraphs 5 to 12, all of such goods being likely to travel through similar channels of trade.

**ANSWER:** Denies.

16. The registration of Applicant’s mark in connection with “nut and seed-based snack bars” would be in direct conflict with the proper function of a trademark; that is, as a designation of the sole and exclusive origin of goods or services, considering Opposer’s prior use of and registration of its Trademarks.

**ANSWER:** Denies.

17. Opposer, as the owner of valid federal trademark registrations and as the prior use of such marks, will be damaged if registration of Applicant’s marks, will be damaged if registration of Applicant’s mark, as published, is granted.

**ANSWER:** Denies.

### **AFFIRMATIVE DEFENSES**

1. Opposer’s claims are barred, in whole or in part, by the doctrine of laches and acquiescence.
2. There is no likelihood for consumer confusion for reasons including but not limited to the differences between the marks, the lack of actual confusion, and that Applicant’s registrations for the identical mark, EARTH BALANCE, have been and continue to peacefully co-exist with Opposer’s Marks both on the USPTO’s Principal Register and in commerce without consumer confusion.

**WHEREFORE**, Applicant GFA Brands, Inc. prays that:

- A. The Board refuses to sustain the Opposition of the Opposer;
- B. The Board finds that there is no basis in fact or law to support the Opposition of the Opposer;

- C. The Board dismisses this Opposition; and
- D. The Board grant such other and further relief as may be appropriate.

Dated: October 10, 2013

Respectfully submitted,

GFA Brands, Inc.

By: /s/ Johanna M. Wilbert

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Certificate of Service and Transmittal:

I hereby certify that a copy of the foregoing Answer is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below, with a hard copy sent by first class mail, postage prepaid, with a courtesy copy via e-mail, to Counsel for Opposer listed below:

R. Glenn Schroeder  
Shroeder Law PC  
110 Cooper Street #605  
Babylon, New York 11702.

Date: October 10, 2013

/s/ Johanna M. Wilbert  
Johanna M. Wilbert